

IMPORTANT NOTICE OF WAGE AND HOUR LAWSUIT AND SETTLEMENT

Pendergrass, et al. v. City Gear, LLC, a.k.a. Shelmar Retail Partners, LLC, et al.
U.S. District Court for the Middle District of Tennessee

TO: ALL STORE MANAGERS AND ASSISTANT MANAGERS EMPLOYED BY CITY GEAR, SHELMAR, AND/OR THEIR RETAIL STORES FROM DECEMBER 11, 2009 THROUGH DECEMBER 11, 2012 – WHO WORKED AT STORES INCLUDING, BUT NOT LIMITED TO, CITY GEAR, CITY GEAR PREMIUM, CGP, MARTY’S, AND THE VAULT BUT NOT INCLUDING DEVEROES.

PLEASE READ THIS NOTICE CAREFULLY.

Pursuant to an Order of the United States District Court for the Middle District of Tennessee, **YOU ARE HEREBY NOTIFIED AS FOLLOWS:**

I. INTRODUCTION

The purposes of this Notice are: (1) to inform you of the existence of a lawsuit by Store Managers and Assistant Managers against City Gear, formerly Shelmar, for alleged overtime compensation; (2) to notify you of the proposed settlement of this suit; and (3) to instruct you on the procedure for participating in the action and settlement, or removing yourself from this suit should you choose to do so.

You have received this Notice because City Gear records indicate that you may be eligible to join a collective action lawsuit involving the federal Fair Labor Standards Act (FLSA) and related state law claims, entitled *Pendergrass, et al. v. City Gear, LLC, a.k.a. Shelmar Retail Partners, LLC, et al.*, No. 3:12-cv-1287 (the “Lawsuit”). The Lawsuit is filed in the U.S. District Court for the Middle District of Tennessee.

The parties have reached a **\$1.9 million settlement** in the Lawsuit, which has been preliminarily approved by the Court. In order to participate in the FLSA action and receive the full benefits of the settlement, you must sign and return the attached Election Form, if you have not already submitted a consent to join the FLSA action. In order to participate in the settlement of the state law claims, you need not do anything; however, without joining the FLSA action, you will receive a substantially reduced share of the monetary benefits of the settlement.

If you choose to participate in the federal claims, the state law claims, or both, and the settlement becomes final, you will receive your share of the settlement proceeds.

The parties preliminarily anticipate that individual settlement shares will range up to **more than \$15,000**. Your share of the settlement will depend upon your rate of pay and the amount of overtime you worked from December 11, 2009 to December 11, 2012 as well as whether you have joined or choose to join the federal FLSA class by filing a consent to join form or the attached Election Form.

II. CORRECTIVE NOTICE

If you were a current employee as of December 2012, you may have participated in one or more conference calls about the Lawsuit with CEO Michael Longo, Vice President of Stores Benjamin Knighten, or other Company executives or representatives. You may have also received other communications from the Company about the case.

The parties and Court are concerned that the Company's statements about the case may have discouraged some employees from joining the Lawsuit.

You are being sent this Notice to allow you to make an informed decision on whether to join this Lawsuit and participate in the settlement. This decision is yours alone. City Gear may not intimidate, threaten, or retaliate or discriminate against you in any way for choosing to join this Lawsuit. Under the law, you may not suffer any adverse consequences for participating in the case or accepting your share of a settlement. City Gear is fully committed to following this law.

You should disregard the Company's statements to you about the merits and potential outcome of this case. The Court has not taken any position on the merits of the Plaintiffs' claims or any defenses that the Company might raise. The current status of the case is that the parties have reached a settlement, which is in the process of receiving final approval from the Court.

This notice will provide a brief overview of the Lawsuit and your options to participate. You are entitled to contact Plaintiffs' counsel or your own attorney to find out more information about this Lawsuit and your legal rights.

III. DESCRIPTION OF LAWSUIT

The Lawsuit alleges that City Gear/Shelmar unlawfully withheld overtime pay owed to Plaintiffs and the members of the above-described class. The Lawsuit alleges that the Company improperly labeled its Store Managers and Assistant Managers as overtime-exempt salaried employees. In fact, Plaintiffs claim, the Company's policy and practice of taking prorated wage deductions if the Store Managers and Assistant Managers worked less than a certain number of hours per week made all of them hourly employees who must be paid overtime. This is the case regardless of whether or not you actually had deductions taken from any of your paychecks.

Upon the agreement of the parties, for purposes of the settlement, the Court certified the Lawsuit to proceed as a "collective action" and "class action" on behalf of employees fitting the Class Description below. This Notice and its contents have been authorized by the U.S. District Court for the Middle District of Tennessee.

IV. CLASS DESCRIPTION

This notice applies to you if you are an individual who was employed at any time between December 11, 2009 and December 11, 2012, as a Store Manager and/or Assistant Manager at a retail store owned or controlled by City Gear/Shelmar but not including Devero's stores.

V. THE SETTLEMENT

City Gear has agreed to pay a total of \$1.9 million to the class to resolve the Store Managers' and Assistant Managers' claims for unpaid overtime. From this amount, the Court will award Plaintiffs' Counsel reasonable attorneys' fees (not to exceed one-third of the settlement fund) and expenses and may also award reasonable service payments of up to \$20,000 to the Named Plaintiffs and other Plaintiffs who helped to litigate the case.

The remaining settlement proceeds will be divided between the class members based on their estimated individual damages, which is to be determined by Company records indicating the amount of overtime pay allegedly owed to each class employee. It is anticipated that awards will range up to more than \$15,000. Payments will be made in two installments.

Class members who have joined the FLSA action or do so by filing the attached Election Form will receive settlement awards in a 2:1 ratio as compared to class members who do not. This ratio accounts for differences in the federal and state law claims and the damages available on these claims.

In addition, City Gear will adopt revised pay practices. Plaintiffs' Counsel is of the opinion that the revised practices comply with the FLSA and other law in all respects.

The proposed settlement is confidential and you may not discuss it with anyone other than (i) the attorneys for the Plaintiffs or another attorney of your choosing; (ii) financial or tax advisors; (iii) your spouse; (iv) or this Court. Further, you may not disparage the Company in relation to the facts and circumstances of this case. Violating these provisions could result in forfeiting your share of the settlement.

VI. PLAINTIFFS AND CLASS COUNSEL SUPPORT THE SETTLEMENT

Plaintiffs Denithia Pendergrass and Alena Kelley, as the Class Representatives, and Class Counsel support this Settlement. The Class Representatives and Class Counsel believe that the settlement provides for strong monetary and non-monetary benefits to the class. Further proceedings in this action entail a substantial degree of risk: the risk that the Court would not allow the case to proceed as a collective and class action, the risk of a trial on the merits, and the inherent delays and uncertainties associated with litigation. Based on their experience litigating similar cases, Class Counsel believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages, would ultimately be resolved, or at what additional cost. In addition, City Gear's ability to pay a future verdict is in question, making it even more important to obtain guaranteed, immediate relief. Therefore, upon careful consideration of all the facts and circumstances of this case, Class Representatives and Class Counsel believe that the Settlement is fair, reasonable, and adequate.

VII. YOUR RIGHT TO PARTICIPATE IN OR EXCLUDE YOURSELF FROM THE LAWSUIT AND SETTLEMENT

TWO SEPARATE CLASSES

The plaintiffs have made claims for overtime under both federal law (the Fair Labor Standards Act, or FLSA) and state law. As a result, there are two separate classes of claimants – a “federal class” and a “state law class.” YOU MAY CHOOSE TO BE PART OF BOTH CLASSES, ONE CLASS, OR NEITHER CLASS, AS EXPLAINED BELOW.

OPTION ONE: DO NOTHING— RECEIVE PARTIAL SETTLEMENT BENEFIT

You are automatically included in the state law class unless you take action to remove yourself from it. Therefore, if you do nothing in response to this Notice, you will remain part of the state law class. Unless you have already joined the federal class by filing a consent to join form, doing nothing will mean that you are not part of the federal class. You would not receive a settlement award on the federal claims.

As part of the settlement, state law-only class members will release all wage and hour or related claims as alleged in Plaintiffs’ Complaint or arising from the same factual predicate of not having not been paid overtime wages owed during the class period, whether arising under Tennessee wage and hour law; the wage and hour laws of other states; or common law contract or tort law, including but not limited to breach of contract and unjust enrichment. Class members who do not join the federal class would not release their claims under the FLSA.

OPTION TWO: BE PART OF BOTH CLASSES— RECEIVE FULL SETTLEMENT BENEFIT

If you decide that you want to be part of both classes in this lawsuit, you MUST complete the attached Election Form and indicate that you want to be involved in both classes. By selecting this option, you will be bound by the judgment or settlement of both the federal and the state law claims. If the settlement is approved, you will release all of the claims specified in Option 1 above, plus your claims for non-payment of overtime under the FLSA.

You will receive the highest possible settlement award by pursuing Option 2. This is because you will obtain the benefit of additional remedies under the FLSA.

If you have already joined the federal class by submitting a consent to join form, you need not do so again. You may contact Plaintiffs’ counsel listed below to confirm whether you are already a member of the federal class.

If you fit the Store Manager or Assistant Manager definitions above, you may join the federal class and participate in the full settlement by completing and mailing the attached Election Form to Plaintiffs’ counsel at either of the following addresses:

Sanford Heisler, LLP
1350 Avenue of the Americas, 31st Floor
New York, NY 10019

Telephone: (646) 402-5650
Facsimile: (646) 402-5651
lmcfely@sanfordheisler.com

Barrett Johnston, LLC
217 Second Avenue North
Nashville, TN 37201

Telephone: (615) 244-2202
Facsimile: (615) 252-3798
aakers@barrettjohnston.com

Please check the box indicating “I wish to be part of both classes.”

TO JOIN THE FLSA LAWSUIT, YOU MUST SIGN, DATE AND MAIL, FAX, OR E-MAIL THE “CONSENT TO JOIN” FORM TO PLAINTIFFS’ COUNSEL.

OPTION THREE: LEAVE THIS LAWSUIT COMPLETELY

If you decide that you do not want to be part of this lawsuit at all, you MUST complete the attached Election Form by indicating that you do not want to be involved in either class of this lawsuit. By selecting this option, you will not be affected by any judgment or settlement in this case, whether favorable or unfavorable to the class; you will not be able to participate in the settlement; and you will be free to pursue any claim you may have on your own, including filing your own lawsuit. Your time to pursue a separate lawsuit may be limited.

VIII. YOUR TIME TO DECIDE IS LIMITED

UNLESS YOU CHOOSE OPTION ONE (DO NOTHING), YOU MUST RETURN THE ENCLOSED ELECTION FORM TO PLAINTIFFS’ COUNSEL WITHIN 60 DAYS OF THE DATE OF THIS NOTICE. TO BE CONSIDERED VALID, THE ELECTION FORM MUST BE POSTMARKED, FAXED, OR E-MAILED BY DECEMBER 29, 2013. OTHERWISE, YOU WILL BE TREATED AS HAVING CHOSEN OPTION 1 – EXCEPT IF YOU HAVE ALREADY PREVIOUSLY JOINED THE FEDERAL CLASS.

IX. NO RETALIATION IS PERMITTED

Federal law prohibits anyone from discriminating or retaliating against you for joining or deciding not to join in this Lawsuit. City Gear is committed to following the law and represents that it will not retaliate against its employees in any fashion.

X. COUNSEL FOR PLAINTIFFS

The law firms of Sanford Heisler, LLP and Barrett Johnston, LLC have been designated by the Court as Class Counsel representing both the federal and state law classes.

If you join the federal class, you will also be designating Class Counsel as your lawyer to make decisions on your behalf concerning the federal class litigation under the FLSA.

Alternatively, you may join this Lawsuit and retain counsel of your own choosing at your own expense. If you wish to retain your own counsel, your attorney must file your "Consent to Join" form with the Court by December 29, 2013 and enter an appearance.

XI. YOUR RIGHT TO OBJECT TO THE SETTLEMENT

You may object to the terms of the Settlement before final approval by submitting a written notice of your objections in the manner described below. If you timely submit written objections, you may also submit a notice of your intent to appear and object at the final approval hearing, if you wish to do so.

To object to the Settlement, you must send a written notice of your objections to Plaintiffs' Counsel at the address shown below. If you and/or counsel you retain wish to appear at the final approval hearing, you and/or counsel you retain must also send a written notice of your intent to appear and object at the final approval hearing. If you obtain your own counsel who wishes to appear and represent you at the final approval hearing, that counsel must file a Notice of Appearance with the Court and mail it to Plaintiffs' Counsel no later than December 29, 2013 (within sixty (60) days of the mailing of this Notice). Any written objection and/or notice of your intent to appear at the hearing must reference the name of the case and case number, *Pendergrass, et al. v. City Gear, LLC, a.k.a. Shelmar Retail Partners, LLC, et al.*, No. 3:12-cv-1287, and must state: (1) your full name; (2) your address; (3) your Class Position(s) held at City Gear/Shelmar; and (4) in clear concise terms the basis of each objection, including the factual and legal arguments supporting the objection. To be valid and effective, any written objections and/or notices of intent to appear at the hearing must be postmarked (if mailed), emailed, or faxed to Plaintiffs' Counsel not later than December 29, 2013 (within sixty (60) days of the mailing of this Notice). A Class Member who fails to submit a written statement of objections in the manner described above, by the specified deadline, will be deemed to have waived any objections and will be foreclosed from making any objection to the Settlement, whether by appeal or otherwise. If you wish to object to Class Counsel's request for attorneys' fees and costs under the Settlement, you may do so by following the same procedure as described in the preceding paragraph.

If you choose Option 3 above (excluding yourself from the lawsuit), you may not also submit objections to the Settlement or to Class Counsel's request for attorneys' fees and costs, nor may you appear at the hearing to present any objections. If you exclude yourself, you have no basis to object, because the case no longer affects you. However, if you exclude yourself, you will have the right to pursue your own claims against City Gear in a separate proceeding, if you wish.

XII. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final approval hearing on January 17, 2014, at the United States District Court for the Middle District of Tennessee, 801 Broadway, Nashville, TN 37203, before the Honorable Todd Campbell, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. At this hearing, the Court will also be asked to approve Class Counsel's request for costs and attorneys' fees and Plaintiffs' request for service payments for

the Class Representatives and other individuals listed above. The hearing may be postponed without further notice to the Class. It is not necessary for you to appear at this hearing. If you have given notice of your objection to the Settlement, you may show up and ask to speak at the hearing, or have an attorney represent you at the hearing at your own expense, but only if by December 29, 2013 you have submitted a notice of your intent to appear at the hearing, in accordance with the instructions set forth above.

If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

XIII. QUESTIONS REGARDING THIS NOTICE, LAWSUIT, OR SETTLEMENT

If you have questions about this Notice, the Election form, the Lawsuit generally, or the proposed settlement, you may contact Plaintiffs' counsel, Sanford Heisler, LLP or Barrett Johnston, LLC, at the telephone numbers and addresses listed above.

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Joint Stipulation of Class Settlement and Release between Plaintiffs and Defendants, which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Joint Stipulation of Class Settlement, may be examined at any time during regular business hours in the office of the Clerk, United States District Court for the Middle District of Tennessee, 801 Broadway, Nashville, TN 37203. Alternatively, the pleadings and other information about the Settlement may be examined online on the United States District Court for the Middle District of Tennessee's website, known as "PACER," at <https://ecf.tnmd.uscourts.gov/cgi-bin/login.pl> **You may also contact Class Counsel listed above for more information.**

IMPORTANT:

- 1. Please do not contact the Court or City Gear or its counsel with questions about this Lawsuit or Settlement.**
- 2. If you move to a different address or change other forms of contact information such as telephone numbers and email addresses please send Plaintiffs' Counsel your new contact information. It is your responsibility to keep current contact information on file to ensure receipt of your Settlement Share.**
- 3. It is strongly recommended that you keep a copy of your completed Election Form and proof of its timely submission until after you have received your Settlement Payment.**

ELECTION FORM

Pendergrass, et al. v. City Gear, LLC, et al., Case No. 3:12-cv-01287,
United States District Court, Middle District of Tennessee

Complete and Mail, Email or Fax Form by December 29, 2013 to:

Sanford Heisler, LLP
1350 Avenue of the Americas, 31st Floor
New York, NY 10019

Telephone: (646) 402-5650
Facsimile: (646) 402-5651
lmcfely@sanfordheisler.com

OR

Barrett Johnston, LLC
217 Second Avenue North
Nashville, TN 37201

Telephone: (615) 244-2202
Facsimile: (615) 252-3798
aakers@barrettjohnston.com

I work or worked for City Gear/Shelmar Retail Partners from approximately _____ [month/year] to _____ [month/year] in the position(s) of Store Manager and/or Assistant Manager.

I have read the foregoing Notice of Lawsuit and wish to join, or to remove myself from, this action as follows:

- ☐ I wish to be part of both classes in this lawsuit. I therefore authorize the filing and prosecution of claims in my name and on my behalf to contest City Gear/Shelmar's alleged failure to pay me overtime pay as required under the Fair Labor Standards Act as brought in these proceedings, and I authorize the filing of this consent in the action. I hereby consent to become a plaintiff in the "federal class" and be bound by any judgment of the Court or any settlement of this action.

I consent to be represented by Sanford Heisler, LLP and Barrett Johnston, LLC in this action.

- ☐ I do not wish to be part of either class in this lawsuit.

Signature

Date

Print Name

Further Information Regarding Election Form

Print Name: _____

Street Address: _____

City, State, and ZIP: _____

Telephone Number(s): (Home): _____

 (Work): _____

 (Cell): _____

E-Mail Address: _____

Further information:

- This lawsuit seeks to recover compensation for overtime worked but not compensated.
- It is illegal for any employer to retaliate against an individual for exercising his or her rights (such as by participating in this lawsuit, signing or submitting this document, or talking to attorneys about his or her rights to full compensation for work performed).
- We are happy to discuss employment rights with any individual. Please contact us at (646) 402-5650.